

1 Charles K. Verhoeven (Bar No. 170151)
charlesverhoeven@quinnmanuel.com
2 David A. Perlson (Bar No. 209502)
davidperlson@quinnmanuel.com
3 50 California Street, 22nd Floor
San Francisco, California 94111
4 Telephone: (415) 875-6600
Facsimile: (415) 875-6700

6 Kevin P.B. Johnson (Bar No. 177129)
kevinjohnson@quinnmanuel.com
7 Victoria F. Maroulis (Bar No. 202603)
victoriamaroulis@quinnmanuel.com
8 555 Twin Dolphin Drive, 5th Floor
Redwood Shores, California 94065
Telephone: (650) 801-5000
9 Facsimile: (650) 801-5100

10 Attorneys for Samsung Electronics Co., Ltd.,
11 Samsung Electronics America, Inc., and
Samsung Research America, Inc.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

HUAWEI TECHNOLOGIES CO., LTD., et al.

CASE NO. 16-cv-02787-WHO

SAMSUNG'S OPPOSITION TO HUAWEI'S MOTION FOR CLARIFICATION OR RECONSIDERATION (DKT. 225)

Plaintiffs,

11

SAMSUNG ELECTRONICS CO., LTD., et al.

Defendants.

21 SAMSUNG ELECTRONICS CO., LTD. &
SAMSUNG ELECTRONICS AMERICA, INC.

Counterclaim-Plaintiffs.

V.

HUAWEI TECHNOLOGIES CO., LTD.,
HUAWEI DEVICE USA, INC., HUAWEI
TECHNOLOGIES USA, INC., & HISILICON
TECHNOLOGIES CO., LTD.

Counterclaim-Defendants.

1 **I. INTRODUCTION**

2 Pursuant to the Court’s January 25, 2018 Order (Dkt. 230), Samsung submits this
 3 opposition to Huawei’s Motion for Clarification, or in the Alternative, for Leave to File a Motion
 4 for Reconsideration (Dkt. 225).

5 From the outset of the claim construction process, the parties’ dispute was clear: Huawei
 6 argued that the claimed “first P-TMSI” could be in any part of the “access message,” including the
 7 NAS part. Samsung was explicit that its construction, by requiring the “first P-TMSI” to be in a
 8 ***field*** in the access message, excluded the NAS part. The Court’s claim construction order walked
 9 through the parties’ dispute and resolved it in Samsung’s favor. Dkt. 168 at 12-14 (“The parties
 10 dispute whether the ‘first P-TMSI’ must occupy a specific location within the RRC message—the
 11 access stratum portion rather than the NAS portion. . . . [T]he reference to ‘a first P-TMSI in an
 12 access message’ must reference the P-TMSI in the access stratum portion of the access message
 13 whether or not there are one or two P-TMSIs.”). In reaching this conclusion, the Court analyzed
 14 the intrinsic evidence in detail and determined that the claims and specification distinguish
 15 between the “first P-TMSI” that the radio access network (“RAN”) node uses, and the “second P-
 16 TMSI” that gets passed to the core network (“CN”) node. *Id.* at 14. The Court concluded that,
 17 “Since the RAN network only accesses the access-stratum of the RRC message, the golden ticket
 18 must be located therein.” *Id.*

19 Nothing in Huawei’s motion requires the Court to revisit this determination or clarify its
 20 claim construction order.

21 First, Huawei’s argument that the Court’s construction does not exclude placing the “first
 22 P-TMSI” in the NAS portion of the access message contradicts the Court’s reasoning throughout
 23 the claim construction order and its clear explanation that “***the reference to ‘a first P-TMSI in an
 24 access message’ must reference the P-TMSI in the access stratum portion of the access message
 25 whether or not there are one or two P-TMSIs.***” Dkt. 168 at 13-14. Regardless of whether this
 26 restriction is “literally present” in the Court’s construction—an argument Huawei makes without
 27 any evidentiary support—the Court’s reasoning binds Huawei and prevents it from rearguing that
 28 the first P-TMSI can be in the NAS part of the access message for purposes of infringement.

1 Second, Huawei’s motion does not present any evidence that the Court did not already
 2 consider and reject during the claim construction proceedings. Huawei points to a “second mode
 3 of operation” where the RAN node forwards a NAS message to the CN node, but as the Court
 4 recognized, this second mode of operation corresponds to the “***second*** P-TSMI” that is distinct
 5 from the claimed “***first*** P-TMSI.” Huawei’s inventor deposition testimony—which Huawei could
 6 have presented via declaration in the claim construction proceedings—simply summarizes this
 7 second mode of operation. It does not add anything new that the Court did not already consider.
 8 The Court also considered and agreed with Samsung’s position that the “first P-TMSI” must be in
 9 the access stratum part of the access message because that is the part that the RAN node parses.
 10 Samsung raised this position in its opening brief—not unexpectedly at the claim construction
 11 hearing, as Huawei argues.

12 In light of the clear record and the Court’s reasoning in its claim construction order, there
 13 is no need for the Court to clarify or reconsider its construction. However, if the Court decides
 14 that doing so would be helpful for case narrowing, summary judgment, or trial, then Samsung
 15 respectfully submits that the construction should reflect the Court’s reasoning in the claim
 16 construction order and define “a first P-TMSI in an access message” as “a first P-TMSI in the
 17 access stratum portion of an access message.”

18 Finally, Samsung notes that Huawei’s motion could be denied procedurally for failure to
 19 comply with the requirements of Civil L.R. 7-9. Huawei violated Civil L.R. 7-9(a) when it
 20 noticed and filed a substantive motion without first seeking leave of Court. Huawei violated L.R.
 21 7-9(b) by failing to exercise reasonable diligence in seeking reconsideration—waiting more than
 22 four months after the Court’s claim construction order. Huawei also failed to identify any basis
 23 for its motion under Civil L.R. 7-9(b)(1)-(3), such as the emergence of new material facts or a
 24 change of law. And Huawei violated Civil L.R. 7-9(c) by repeating the same arguments it made
 25 during the claim construction proceedings.

26 For these reasons, Samsung respectfully requests that the Court deny Huawei’s motion, or
 27 alternatively clarify that its construction of “first P-TMSI” consistent with the reasoning in its
 28 claim construction order.

1 **II. ARGUMENT**

2 **A. The Court’s Claim Construction Order is Clear and Binding on Huawei**

3 The Court adopted Samsung’s proposed construction after a thorough and careful analysis
 4 of the parties’ dispute concerning the location of the “first P-TMSI” in the access message. Dkt.
 5 No. 168 at 12-14. As the Court explained, “[t]he parties dispute whether the ‘first-PTMSI’ must
 6 occupy a specific location within the RRC message—the access stratum portion rather than the
 7 NAS portion.” *Id.* at 12. The Court addressed Huawei’s position that the “first P-TMSI” can be
 8 placed in the NAS portion of the assess message. *Id.* at 12 (“Huawei insists that ‘nothing in the
 9 intrinsic evidence requires that the P-TMSI be located in any particular place in the access
 10 message.’”) (quoting Huawei’s Op. Br. at 15). It then addressed Samsung’s position that the
 11 claims and specification distinguish between a “first P-TMSI” in the access stratum part of the
 12 access message, and a “second P-TMSI” in the NAS part of the message. *Id.* at 13. After
 13 evaluating these arguments in light of the intrinsic record, the Court determined that Samsung’s
 14 construction was correct. *Id.* at 14.

15 In adopting Samsung’s construction, the Court was explicit that the claimed “first P-
 16 TMSI” must be in the access stratum part of the access message, and cannot be in the NAS part.
 17 *Id.* at 13-14 (“Rather, the reference to ‘a first P-TMSI in an access message’ must reference the P-
 18 TMSI in the access stratum portion of the access message whether or not there are one or two P-
 19 TMSIs.”). In particular, the Court explained that the invention would not work if the “first P-
 20 TMSI” were not in the access stratum part of the access message because that is where the RAN
 21 node looks to find the MME information. *Id.* at 14 (“Since the RAN network only accesses the
 22 access-stratum of the RRC message, the golden ticket must be located therein.”). The Court also
 23 rejected Huawei’s argument that limiting the “first P-TMSI” to the access stratum would violate
 24 claim differentiation, explaining that “[c]onstruing ‘first -PTMSI’ to refer to the PTMSI in the
 25 access stratum portion of the access message does not read out any limitation imposed by the
 26 dependent claims.” *Id.* at 14 n.8 (emphasis added).

27 In light of this record, Huawei cannot credibly argue that it needs clarification about
 28 whether the Court’s construction requires the “first P-TMSI” to be in the access stratum part of the

1 access message and excludes placing the “first P-TMSI” in the NAS part. It clearly does. Dkt.
 2 No. 168 at 14.

3 The Court’s reasoning in this regard binds Huawei and precludes it from rearguing that the
 4 “first P-TMSI” can be in the NAS part of the access message for purposes of infringement. *See,*
 5 *e.g., Augme Techs., Inc. v. Yahoo! Inc.*, 755 F.3d 1326, 1332 (Fed. Cir. 2014). In *Augme*, Judge
 6 Spero had construed the limitation “embedded in said webpage” to mean “written into the html
 7 code of the web page.” *See, e.g., Augme Techs., Inc. v. Yahoo! Inc.*, No. 3:09-cv-05386-JCS, 2011
 8 WL 6048817 at *8-10 (N.D. Cal. Sept. 27, 2011). The claim construction order explained that
 9 “‘embedding’ does not include ‘external linking.’” *Id.* at *9. Based on the court’s construction
 10 and explanation, Yahoo! moved for summary judgment of non-infringement based on the fact that
 11 the accused products used “smart code” that was externally downloaded to the accused webpages.
 12 *See Augme*, 755 F.3d at 1334. The court granted Yahoo!’s motion and Augme appealed. *Id.* The
 13 Federal Circuit affirmed and specifically pointed to the reasoning in the district court’s claim
 14 construction order:

15 The district court construed “embedded” to mean “written into the HTML code of
 16 the web page,” and explained that this construction was consistent with the term’s
 17 plain meaning. The district court explained that this construction expressly
 18 excluded “a code module that is retrieved via external linking,” i.e., a code not
 actually in the web page HTML, but separately retrieved after the web page
 download.

19 *Id.* at 1332 (citations omitted).

20 The Federal Circuit then analyzed the accused “smart code” and agreed that it could not
 21 infringe under the district court’s construction. *Id.* at 1334 (“This smart code is not embedded
 22 under the district court’s construction; it is separately downloaded.”).

23 The same rationale should apply in this case. The Court’s claim construction order makes
 24 clear that its construction of “a first P-TMSI in an access message” requires the first P-TMSI to be
 25 in the access stratum part of the access message, and excludes placing the first P-TMSI in the
 26 NAS part of the access message. Dkt. No. 168 at 12-14. Huawei should not be permitted to
 27 ignore this reasoning and argue that the P-TMSI can be in the NAS part for purposes of its

1 infringement case—particularly where Huawei raised and lost this argument during claim
 2 construction.

3 Accordingly, there is no reason for the Court to clarify its construction. If, however, the
 4 Court determines that clarifying its construction would be helpful for case narrowing, summary
 5 judgment, or trial, then the appropriate construction would define “a first P-TMSI in an access
 6 message” as “a first P-TMSI in the access stratum portion of an access message.” This
 7 construction is consistent with the Court’s reasoning in its claim construction order and confirms
 8 that the “first P-TMSI” cannot be in the NAS part of the access message. *See* Dkt. No. 168 at 13-
 9 14 (“Rather, the reference to ‘a first P-TMSI in an access message’ must reference the P-TMSI in
 10 the access stratum portion of the access message whether or not there are one or two P-TMSIs.”);
 11 *id.* at 14 n.8 (“Construing ‘first-PTMSI’ to refer to the PTMSI in the access stratum portion of the
 12 access message does not read out any limitation imposed by the dependent claims.”).

13 **B. There is No Reason for the Court to Reconsider Its Claim Construction Order**

14 The Court’s claim construction analysis was grounded in the intrinsic record of the ’166
 15 patent. As the Court explained, the patent claims and specification distinguish between the “first
 16 P-TMSI” in the access stratum part of the access message, and the “second P-TMSI” in the NAS
 17 part. Dkt. 168 at 13 (“Viewing the surrounding claims and the specification demonstrates that the
 18 use of ‘first’ and ‘second’ connotes more than ‘repeated instances of an element.’”). The Court
 19 reasoned that “the reference to ‘a first P-TMSI in an access message’ must reference the P-TMSI
 20 in the access stratum portion of the access message whether or not there are one or two P-TMSIs.
 21 Otherwise, the invention would not work.” *Id.* at 13-14. The Court reached this conclusion based
 22 on the fact that the patent describes the RAN node as using the “first P-TMSI” to identify the old
 23 MME, and further describe the RAN node as parsing *only* the access stratum part of the access
 24 message, *not* the NAS part. *Id.* (citing the ’166 patent at 5:52-58).

25 Huawei’s motion does not identify any flaws in the Court’s analysis or evidence to
 26 contradict it. Huawei focuses on a “second mode of operation” where the RAN node forwards the
 27 NAS part of the access message to the backend SGSN of the legacy network. Dkt. 225 at 6-7.
 28

1 But this second mode of operation corresponds to the “second P-TMSI” that the Court
 2 distinguished from the claimed “first P-TMSI.” Dkt. 168 at 13.¹

3 Huawei’s inventor testimony describes this same mode of operation. Dkt. 225 at 8. Mr.
 4 Guo testified that in the second mode, “the new core network node would use the constructed
 5 information containing the old RAI and P-TMSI by the UE to find an old core network node.”
 6 Dkt. 225-2 at 246:14-247:9. The P-TSMI in this situation is the “second P-TMSI” carried in the
 7 NAS message, *not* the “first P-TMSI” that the RAN node uses. This is clear from Figure 9 of the
 8 ’166 patent, which shows the old RAI and second P-TMSI in the NAS part of the access message.
 9 *See* Dkt. 150 at 18. The Court analyzed this mode of operation in its claim construction order and
 10 expressly distinguished it from the claimed “first P-TMSI.” Dkt. 168 at 13-14. Accordingly, Mr.
 11 Guo’s testimony has no impact on the Court’s analysis.²

12 Huawei is also incorrect when it states that “[a]t no point do the parties’ claim construction
 13 briefs discuss restricting the first P-TMSI to the ‘access stratum’ portion of the access message.”
 14 Dkt. 225 at 2. Huawei understood from the outset that the purpose of Samsung’s construction was
 15 to clarify that the “first P-TMSI” must be in the access stratum part of the message, and cannot be
 16 in the NAS part. Dkt. 141 at 15 (“Samsung apparently contends that a P-TMSI ‘field’ must be
 17 ‘contained directly in an access message.’”). Samsung confirmed this point in its responsive claim
 18 construction brief when it distinguished between the “first P-TMSI” and the “second P-TMSI.”
 19 Dkt. 150 at 17-18. Samsung explained that the first P-TMSI must be in a field of the access
 20 message (rather than the NAS part) because that is where the RAN node looks to find the MME

21
 22
 23 ¹ The introduction to Huawei’s motion argues that there is an “*operable* embodiment that
 24 relies on a first P-TMSI within the NAS portion of the access message to practice the invention.”
 25 Dkt. 225 at 3. Huawei does not provide any evidence to support this argument, and the remainder
 26 of its motion focuses on the “second P-TMSI” rather than the “first P-TMSI.” *Id.* at 6-9.
 27 Nowhere does Huawei identify a “first P-TMSI” in the NAS part of the access message. *Id.*
 28

2 ² In any case, Mr. Guo’s testimony could not be used to contradict the intrinsic evidence. *See Speedplay, Inc. v. Bebop, Inc.*, 211 F.3d 1245, 1256 (Fed. Cir. 2000) (“The trial court, however, was entitled to accord little weight to the ‘litigation-induced pronouncements of the inventor,’ which were contrary to clear statements in the written description and reissue application.”).

1 information. *Id.* Samsung even included a figure showing the “first P-TMSI” in the access
 2 stratum part and the “second P-TMSI” in the NAS part:

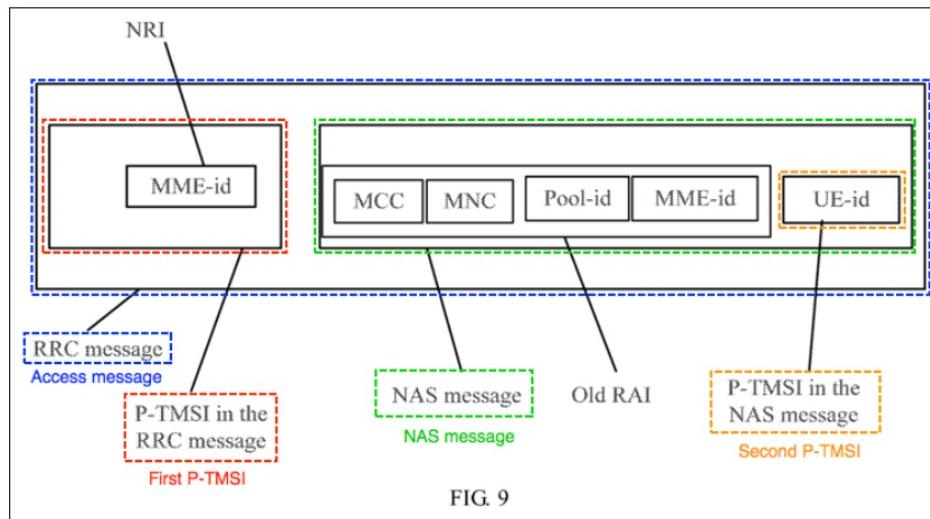


FIG. 9

12 *Id.* at 18 (annotated Figure 9 of the ’166 patent).

13 Accordingly, Samsung did not seek “to further restrict its original proposal” or raise new
 14 arguments at the *Markman* hearing. Dkt. 225 at 4. Samsung maintained the same arguments
 15 throughout the claim construction process, and Huawei had ample opportunity to respond. Indeed,
 16 Huawei *did* respond, but the Court rejected its arguments as inconsistent with the intrinsic
 17 evidence. Dkt. 168 at 12-14. Huawei has not presented any legitimate reason for the Court to
 18 revisit this determination.

19 C. Huawei’s Motion Violates the Requirements of Civil L.R. 7-9

20 In addition to being wrong on the merits, Huawei’s motion is procedurally improper.
 21 Although Huawei styled its submission as a motion for clarification, it is clearly a motion for
 22 reconsideration. Courts in the Northern District have explained that they “will not exalt form over
 23 substance and permit a party to circumvent the applicability of Local Rule 7-9 merely by avoiding
 24 the ‘motion for reconsideration’ label.” *Lam Research Corp. v. Schunk Semi.*, 65 F. Supp. 3d 863,
 25 869 (N.D. Cal. 2014). “Courts routinely look to the *substance* of the motion rather than how it is
 26 styled in determining the standard to apply.” *Id.* Here, the substance of Huawei’s motion asks the
 27 Court to reconsider its claim construction analysis and find that the term “first P-TMSI” in the

asserted claims of the '166 patent can refer to a P-TMSI in the NAS portion of the claimed "access message." Dkt. 225 at 6-8.

Because Huawei’s motion seeks reconsideration, it is subject to the requirements of Civil L.R. 7-9(a)-(c). The motion violates each of these requirements. First, the rule provides that “[n]o party may notice a motion for reconsideration without first obtaining leave of Court to file the motion.” Civil L.R. 7-9(a). Huawei’s motion violates this requirement because it presents substantive arguments before Huawei obtained leave of Court. *See generally* Dkt. 225 at 1-8.

Second, the rule requires a showing of reasonable diligence in seeking reconsideration. Civil L.R. 7-9(b). Huawei’s motion violates this requirement because it offers no explanation for why it waited four and a half months after the Court issued its claim construction order to seek reconsideration.³ Dkt. 225 at 8-9. Huawei’s only argument is that the case is “highly complex” and “[a] long runway remains on the case schedule,” but neither point justifies Huawei’s delay in bringing its motion. *Id.*⁴

14 Third, Civil L.R. 7-9(b) requires a motion for leave to show (1) a material difference in
15 fact or law, (2) the emergence of new material facts or a change of law, or (3) a manifest failure by
16 the Court to consider material facts or dispositive legal arguments. Civil L.R. 7-9(b)(1)-(3).
17 Huawei’s motion simply fails to address these requirements. *See* Dkt. 225 at 9. To the extent
18 Huawei was attempting to rely on its inventor testimony for this purpose, the testimony is neither
19 material nor new. *See Therasense Inc. v. Becton, Dickinson & Co.*, 560 F. Supp. 2d 835, 845
20 (N.D. Cal. 2008) (“The Court is not inclined to revisit its claim construction based on extrinsic

³ Huawei fails to explain why it could not have submitted testimony from its inventor—an employee under Huawei’s control—via a declaration filed with its claim construction brief. At a minimum, Huawei should have sought reconsideration three months ago after the inventor’s deposition if it believed the testimony was relevant to the Court’s construction.

²⁴ ⁴ Huawei is also incorrect that “Samsung can make no credible prejudice argument.” See Dkt. 225 at 9. In the four and a half months since the Court’s claim construction order, Samsung has prepared its case under the Court’s construction, including through review of documents and source code, and traveling to Hong Kong to depose the inventor of the ’166 patent. The timing of Huawei’s motion for reconsideration would leave Samsung with only a month of fact discovery to respond to a changed construction.

1 evidence that Abbott, in the exercise of reasonable diligence, could have brought to the attention
 2 of the Court at the time of the claim construction hearing.”).

3 Finally, Huawei’s motion violates Civil L.R. 7-9(c) because it repeats the same arguments
 4 that Huawei raised and the Court rejected during the claim construction proceedings as discussed
 5 in Section II.B above.

6 **III. CONCLUSION**

7 For the reasons set forth above, Samsung requests that the Court deny Huawei’s motion
 8 (Dkt. 225), or alternatively clarify that its construction requires the “first P-TMSI” to be in the
 9 access stratum portion of the access message and excludes placing the “first P-TMSI” in the NAS
 10 portion of the access message.

11

12 DATED: February 1, 2018

Respectfully submitted,

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14 QUINN EMANUEL URQUHART &
 SULLIVAN, LLP

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By /s/ Victoria F. Maroulis

16

Charles K. Verhoeven
 Kevin P.B. Johnson
 Victoria F. Maroulis
 David A. Perlson
 Thomas D. Pease

17

18 *Attorneys for Samsung Electronics Co., Ltd.,
 Samsung Electronics America, Inc., and
 Samsung Research America, Inc.*

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